

REMARKS

This Amendment is responsive to the Office Action mailed December 24, 2009, which has been carefully considered. At the time of the Office Action, claims 1-26 and 40-47 were presented for examination. Claims 1, 18, 21, 23, 25 and 47 are of independent form.

In the Office Action, the Examiner indicates that Applicant's arguments provided in the prior response have been considered, but are moot in view of new grounds of rejection.

With this Amendment, claims 1, 2, 3, 5, 11, 14-15, 18-26, 40-44 and 47 have been amended. Support for the amended claims is found in the originally filed application, particularly at locations identified hereinafter. Accordingly, no new matter has been added to the application.

Reconsideration and allowance are requested for at least the following reasons.

35 U.S.C. § 103 Rejections

Claims 1-12, 14-26, 40-45 and 47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Baker et al., U.S. Patent No. 6,149,620 ("Baker") in view of Eggers et al., U.S. Patent No. 5,873,855 ("Eggers").

Without acquiescing to the properness of the foregoing rejection, Applicant has elected to amend independent claims 1, 18, 21, 23, 25 and 47 to expedite prosecution and further distinguish from the art, thus rendering any further discussion of the foregoing rejection against the claims moot. Applicant will now address the cited art in relation to the amended claims.

In the Office Action, at page 3, it is noted Baker fails to disclose an electrode tip comprising an electrically conductive cone shaped portion, with the cone shaped portion having a circular portion which narrows towards the distal end of the device.

Turning to the secondary reference, Eggers is cited for teaching an embodiment where "the distal tip of the probe has a conical shape and includes an array of active electrodes along the conical surface **140**." Col. 19, ll. 6-8.

In further review of Eggers, the Applicant notes that "as shown in FIG. 6, *insulating matrix 142* tapers in the distal direction to form conical distal surface **140**." (*Italics emphasis*

added) Thus, the conical distal surface 140 of Eggers is not understood by the Applicant to be electrically conductive.

Now, to further distinguish from the art, Applicant has amended claims 1, 18, 21, 23, 25 and 47 to include the feature of the electrode tip comprising an electrode having an electrically conductive cone shaped portion, with the cone shaped portion having a circular portion which narrows towards the distal end of the device along an electrically conductive cone shaped surface. Exemplary support for the foregoing amendment may be found in paragraph [0243], as well as FIGS. 33 and 34, of the published application (i.e. US 2005/0015085A1).

Turning to the art, neither Baker nor Eggers are understood by the Applicant to disclose a device, and in particular an electrode, as claimed. With regards to Eggers, as indicated in reference to FIG. 6, *supra*, *insulating matrix* 142 tapers in the distal direction to form conical distal surface 140. Thus, the conical distal surface 140 of Eggers is not understood by the Applicant to provide an electrically conductive cone shaped surface as recited by the claims.

Furthermore, also in reference to FIG. 6 of Eggers, electrode terminals 146 appear to be cylindrical with a flat distal end surface. Thus, the electrode terminals 146 also do not appear to provide an electrically conductive cone shaped surface as recited by the claims, either individually or in totality. Moreover, Applicant believes that one of ordinary skill in the art would not be led to the Applicant's claimed device in view of the cited art. If distal surface 140 of Eggers were made electrically conductive, Applicant believes the electrode terminals 146 would no longer be electrically isolated relative to one another and defeat the purpose of Eggers.

SUMMARY

The Applicant respectfully submits that, in light of the foregoing amendments and remarks, and having dealt with all the rejections raised by the Examiner, the claims are in order for allowance.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account No. 50-2121.

AMENDMENT

Serial Number: 10/813,736

Filing Date: March 30, 2004

Title: Fluid-Assisted Medical Devices, Systems and Methods

Page 12
TLK023CON

Respectfully submitted,

Grossman, Tucker, Perreault & Pfleger, PLLC
55 South Commercial Street
Manchester, New Hampshire 03101
603.668.6560
Customer No. 32047

Date: April 26, 2010

By: /Michael J. Gallagher/
Michael J. Gallagher, Esq.
Reg. No. 42,564